

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION I

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COURT OF APPEALS
STATE OF WASHINGTON
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DAVID J. JENKINS,

Respondent,

v.

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Appellant.

78652-6
No. 574116

RESPONDENT'S RESPONSE
TO MOTION TO INCLUDE
ILLUSTRATIVE EXHIBITS
IN APPENDIX TO BRIEF

1. Identity of Moving Party

Respondent, David J. Jenkins.

2. Statement of Relief Sought

Respondent asks this Court to deny Appellant's request to include illustrative exhibits in the appendix to Appellant's brief.

3. Facts Relevant to the Motion

On January 23, 2006, Appellant filed a request to file an over-length brief. Appellant is now requesting "additional pages," in appendix format, allegedly to explain how an agency rule in this case applies with respect to "hypothetical clients."

MOTION TO FILE OVER-LENGTH BRIEF - 1

4. Grounds for Relief and Argument

Respondent objects to Appellant including “illustrative examples” in the appendix.

First, Appellant has already requested permission to file an over-length brief, which should provide more than an ample number of pages to provide illustrative content (“75 Pages”).

Second, Respondent should not be subject to new information on appeal. In other words, Appellant should not be able to supplement the record on appeal with new facts. The parties spent a tremendous amount of time and effort developing the record below. Respondent has not been

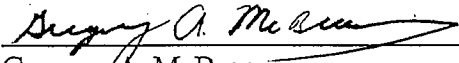
notified of the content or nature of this additional new information that Appellant now wants to provide in appendix format. Respondent does not have the time or resources to go through a brand new set of facts to determine the merits of Appellant’s new assertions.

Finally, “hypothetical clients” are not necessary as the lower court’s findings were “as applied” to Respondent, not hypothetically on how the rule would apply to other persons. Moreover, Appellant has not provided enough detail about these “hypothetical clients” for providing meaningful review of whether or not the information would be appropriate. Appellant should not be granted a blank check.

For the foregoing reasons, Appellant's motion should be denied.

DATED this 24th day of January, 2006.

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